

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN STOCK EXCHANGE,
LLC; CHICAGO BOARD OPTIONS
EXCHANGE, INCORPORATED;
PACIFIC EXCHANGE, INC.; and
PHILADELPHIA STOCK EXCHANGE,
INC.,

Defendants.

Plaintiff, United States of America, filed its complaint on September 11, 2000. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party of any issue of fact or law.

ORDERED, ADJUDGED AND DECREED that:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of and the parties to this action. The complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C. § 1. Venue is proper in the District Court for the District of Columbia.

II.

DEFINITIONS

As used in this Final Judgment:

1. "Any" means one or more.
2. "Ask" means the quoted price at which a person offers to sell an option.
3. "Authorized by SEC personnel" means (a) conduct that has been explicitly described to the SEC in writing, and about which the SEC has stated, in a writing signed by a person at the Director level or higher, that it has no objection to such conduct or otherwise approves it; or (b) conduct the SEC has expressly requested be undertaken in a writing signed by a person at the Director level or higher.
4. "Bid" means the quoted price at which a person offers to buy an option.
5. "Equity option" means an option on the shares of a single underlying corporate entity, and does not include an option on an index of securities or options on shares of exchange-traded funds, such as index fund shares, Unit Investment Trust shares or Portfolio Depositary Receipts.
6. "Exchange" means any exchange in the United States that is registered under

Section 6 of the Securities Exchange Act, and that provides (or begins to provide at any time during the term of this Final Judgment or has submitted an application to the SEC for authority to begin to provide) a venue (including an electronic venue) for buying and selling options issued by the OCC.

7. “List” means to certify to the OCC that an option contract, option class or option series meets applicable standards for the purpose of buying or selling an option contract, class or series.

8. “Market maker” means a person who is registered with an exchange for the purpose of buying or selling options as a dealer or specialist on an exchange, including a person acting as a specialist, primary market maker or designated market maker.

9. “Member” means a person, partnership, corporation, or other organization that has been granted trading privileges on an exchange.

10. “OCC” means the Options Clearing Corporation, each of its successors, divisions, subsidiaries, and affiliates, and all present officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

11. “Option” means a contract that gives the holder the right either to buy or sell a specified amount or value of a particular underlying interest at a fixed exercise price by exercising the option before its specified expiration date.

12. “Option class” means all option contracts of the same type (call or put) and style covering the same underlying interest.

13. “Option series” means all option contracts of the same class having the same unit of trading, expiration date, and exercise price.

14. "Or" means and/or.
15. "SEC" means the United States Securities and Exchange Commission.
16. "Spread" means the difference between a bid and an ask for the same option series at the same time.
17. "Trade" means the business of buying or selling option contracts, classes or series.
18. "Underlying interest" means any of the following interests: equity securities, stock indexes, government debt securities, and foreign currencies.

III.

APPLICABILITY

This Final Judgment applies to each defendant and to each of its officers, directors, governors, successors, and assigns and to any employee or agent, including exchange members of any committee of defendant whose duties or responsibilities include selecting option classes to be listed, developing new option products or surveillance, enforcement or ensuring compliance with laws and regulations, and applies to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing in this Final Judgment creates any rights for, or gives standing to, any person not a party to this action.

IV.

PROHIBITED CONDUCT

A. Except as provided in Section V, each defendant is enjoined and restrained from, directly or indirectly:

- (1) Agreeing with any other exchange that any equity option class shall be traded

exclusively on any one exchange;

(2) Agreeing with any other exchange to allocate trading of any equity option class or classes between or among exchanges; and

(3) Agreeing with any other exchange to require, prevent, or limit the listing, delisting or trading of any equity option class.

B. Except as provided by Section V, no defendant shall maintain any rule, policy, practice, or interpretation that directly prohibits, or that has a purpose and an effect of indirectly prohibiting, it from listing any equity option class because that option class is listed on another exchange.

C. Except as provided in Section V, each defendant is enjoined and restrained from threatening to retaliate, retaliating against, harassing or intimidating any exchange or any member of any exchange because it:

(1) Proposes or begins to list or trade any equity option class on any exchange;

(2) Seeks to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; or

(3) Seeks to introduce new equity option products.

For purposes of this Section, listing an option that is listed on another exchange or exchanges shall not constitute retaliation, harassment or intimidation against such exchange or exchanges.

V.

EXCEPTIONS

Nothing in this Final Judgment shall be construed to:

A. Enjoin or prohibit conduct expressly permitted by statute, SEC rule, SEC order,

or exchange rule made legally effective by formal filing with the SEC and satisfaction of appropriate SEC process, or authorized by SEC personnel.

B. Enjoin or prohibit any defendant from making unilateral business decisions, reflecting independent business judgment based upon factors set forth in SEC approved rules, regarding whether to list or delist an option class, whether to introduce a new option product, or whether to increase or decrease capacity to list option classes.

C. Address the legality of a merger, or acquisition of another exchange, or a legitimate joint venture between a defendant exchange and a non-defendant.

D. Enjoin or prohibit conduct protected by the doctrine established in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), and its progeny.

E. Enjoin or prohibit any exchange member or market maker from unilaterally setting the spreads, quantities or prices at which such member or market maker will trade any option.

F. Enjoin or prohibit any exchange member or market maker from communicating to any person the spreads, quantities or prices at which it is willing to trade any option, for the purpose of exploring the possibility of a purchase or sale of such option, or to negotiate for or agree to such purchase or sale.

G. Enjoin or prohibit any defendant from engaging in actions necessary to surveillance and enforcement activities undertaken pursuant to the Amended and Restated Agreement, dated June 20, 1994, defining, governing, and regulating the Intermarket Surveillance Group and any amendment or successor to the Intermarket Surveillance Group

agreement.

VI.

REQUIRED CONDUCT

Each defendant is ordered to initiate and maintain an antitrust compliance program which shall include designating, within sixty (60) days of the entry of this Final Judgment, an Antitrust Compliance Officer, who shall be responsible for establishing and maintaining an antitrust compliance program designed to provide reasonable assurance of compliance with this consent judgment and with the federal antitrust laws by the defendant in connection with operating a venue for options trading. The Antitrust Compliance Officer shall also:

A. Distribute, within thirty (30) days from the entry of this Final Judgment or designation of the Antitrust Compliance Officer, whichever is later, a copy of this Final Judgment to: (i) all members of the board of directors or governors of the defendant; (ii) all officers of the defendant; (iii) all employees of the defendant whose duties or responsibilities include selecting option classes to be listed, developing new options products, surveillance, enforcement or ensuring compliance with laws and regulations; and (iv) all members of any committee of the defendant whose duties or responsibilities include selecting option classes to be listed, developing new options products or surveillance, enforcement or ensuring compliance with laws and regulations;

B. Distribute within thirty (30) days of appointment or assignment a copy of this Final Judgment to: (i) any person who becomes a member of the board of directors or governors of the defendant; (ii) any person who becomes an officer of the defendant; (iii) any person who becomes an employee of the defendant whose duties or responsibilities include selecting option

classes to be listed, developing new options products, surveillance, enforcement or ensuring compliance with laws and regulations; and (iv) any person who becomes a member of any committee of the defendant whose duties or responsibilities include selecting option classes to be listed, developing new options products, or surveillance, enforcement or ensuring compliance with laws and regulations;

C. Brief annually those persons designated in paragraphs A and B of this subsection on the meaning and requirements of the federal antitrust laws in connection with operating a venue for trading options and of this Final Judgment and inform them that the Antitrust Compliance Officer or a designee of the Antitrust Compliance Officer is available to confer with them regarding compliance with such laws and with this Final Judgment;

D. Obtain from each person designated in paragraphs A and B of this subsection an annual written certification that he or she: (a) has read and agrees to abide by the terms of this Final Judgment; and (b) has been advised and understands that noncompliance with this Final Judgment may result in his or her being found in civil or criminal contempt of court; and

E. Maintain a record of persons to whom this Final Judgment has been distributed and from whom the certification required by paragraph D of this Section has been obtained.

VII.

CERTIFICATIONS

Within ninety (90) days after entry of this Final Judgment, each defendant shall certify to the Court and to the Assistant Attorney General in charge of the Antitrust Division that the defendant: (a) has designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (b) has distributed this Final Judgment, briefed the

appropriate persons, and obtained certifications, as required by Section VI.

VIII.

PLAINTIFF'S ACCESS

A. For the sole purpose of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant at its principal office, be permitted:

- (1) Reasonable access during office hours of such defendant to inspect and copy all records and documents, excluding individual customer records, in the possession or under the control of such defendant, which may have counsel present, and which relate to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such defendant and without restraint or interference from the defendant, to interview officers, employees, or agents of such defendant, each of whom may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. Each defendant shall submit an annual report, in a form acceptable to the Antitrust Division, identifying:

(1) Each request made in accordance with its rules to list an option and what action, if any, was taken; and

(2) Each allegation of harassment or threats in possible violation of Section IV.C about which it is aware and what action the defendant took to investigate the allegation.

D. Each defendant shall submit a semi-annual report, in a form acceptable to the Antitrust Division, setting out each listing of a new option and each delisting of an option that occurred during that period.

E. Each defendant shall submit to the Antitrust Division a copy of any filing or submission to the SEC that relates to compliance (including any request for extension of time or for additional time for compliance) with Section IV, above, or Sections IV.B.(a), (b), (c), (h), or (j) of the Order Instituting Public Proceedings, Making Findings and Imposing Remedial Sanctions against defendants, Release No. 43268, issued by the SEC on September 11, 2000.

F. No information or document obtained by the means provided in Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, or the SEC, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

G. If at the time information or documents are furnished by any defendant to the United States, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil

Procedure,” then the United States shall give such defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

H. Each defendant shall have the right to claim protection from public disclosure, under the Freedom of Information Act, 5 U.S.C. § 552, or any other applicable law or regulation, for any material submitted to the Antitrust Division under this Final Judgment. After appropriate consideration of such claim of protection, the Antitrust Division will either assert that the material is protected from disclosure under law or give such defendant ten (10) calendar days notice of its intent to disclose the material.

IX.

JURISDICTION RETAINED

Jurisdiction is retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement or modification of any of its provisions, and for the punishment of any violation hereof.

X.

EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire ten (10) years from the date of entry.

XI.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

DATED: December 6, 2000

_____/s/_____
EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE